

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

RICHARD N. BATSON and BEVERLY J.  
JONES-BATSON,  
Plaintiffs,  
v.  
DEUTSCHE BANK TRUST AMERICAS,  
As Indentured Trustee for SASTA 2005-3  
Mortgage Backed Assets 2005-3;  
MORGAN STANLEY; OCWEN LOAN  
SERVICING; and NORTH CASCADE  
TRUSTEE SERVICES,  
Defendants.

No. 2:15-cv-00329-SAB

**ORDER GRANTING MOTIONS  
TO DISMISS**

***Introduction***

Before the Court is the Motion to Dismiss, ECF No. 5, filed by Defendants Ocwen Loan Servicing, LLC (“Ocwen”) and Deutsche Bank Trust Company Americas as Indenture Trustee for the registered holders of Saxon Asset Securities Trust 2005-3 Mortgage Loan Asset Backed Notes, Series 2005-3 (“Deutsche”), and the Motion to Dismiss for Failure to State a Claim, ECF No. 6, filed by Defendant Morgan Stanley. Ocwen and Deutsche filed their motion on January 11, 2016, and Morgan Stanley filed its motion on January 29, 2016. The Plaintiffs

1 have responded to both motions, though untimely. In the interests of justice,  
2 however, the Court endeavored to resolve these motions on the merits.

3        Though oral argument was scheduled for April 21, 2016, in Spokane,  
4 Washington, these motions are proper to hear without oral argument. *See* Local  
5 Rule 7.1(h)(3)(B)(iii). The Court reviewed the motions, as well as the related  
6 filings and documents, including those submitted for judicial notice, as well as the  
7 record for the prior federal action involving these parties and claims, which this  
8 Court presided over. *See Batson et al. v. Deutsche Bank Trust Americas et al.*,  
9 2:15-cv-00193-SAB (E.D. Wash. July 24, 2015). For the reasons discussed below,  
10 the Court **grants** both motions to dismiss and **denies** the motion to stay.

### 11 *Material Facts*

12        On April 16, 2005, the Batsons entered an agreement to purchase the  
13 property contested in the instant action, 12910 East Sinto Avenue, Spokane Valley  
14 Washington 99216. Plaintiffs executed a deed of trust to secure the purchase on  
15 July 3, 2005. Plaintiffs noted discrepancies with their payments, and notified  
16 Saxon Mortgage, and later Ocwen, and contested the terms of the deed for many  
17 years.

18        Plaintiffs eventually defaulted on their loan payments. A Notice of Trustee  
19 Sale was posted on the property on March 28, 2015, which was filed on June 1,  
20 2015 with the Spokane County Auditor. The Plaintiffs' filed a complaint on June  
21 26, 2015 in Spokane County Superior Court, alleging Wrongful Foreclosure,  
22 Intent to Defraud, Wrongful Claim to Debt Secured by Deed, Violation of  
23 Consumer Rights, and Violation of Plaintiffs' Civil Rights. The case was removed  
24 to this Court's jurisdiction on July 24, 2015 and given cause number 2:15-cv-  
25 00193-SAB ("193 case"). Plaintiffs' moved for a preliminary injunction on  
26 August 21, 2015 to halt the trustee's sale. The Court denied the motion and  
27 granted motions to dismiss, ending all claims except a cause of action under the  
28 federal Real Estate Procedures Act, 12 U.S.C. § 2601. The '193 case is pending.

**ORDER GRANTING MOTIONS TO DISMISS ^ 2**

1 Plaintiffs filed a second complaint, beginning the instant case, in Spokane  
2 County Superior Court on November 12, 2015, six days after this Court granted  
3 the motions to dismiss. The complaint included claims for Wrongful Non-Judicial  
4 Foreclosure and Fraud. Defendants removed the complaint to this Court on  
5 December 1, 2015, and the motions to dismiss followed shortly.

### 6 *Standard*

7 A motion to dismiss for failure to state a claim may be granted only when  
8 the plaintiff's allegations, taken as true, demonstrate the plaintiff is not entitled to  
9 relief as a matter of law. *Ashcroft v. Iqbal*, 556 U.S. 662 (2009); *Mendocino*  
10 *Environ. Cntr. v. Mendocino Cnty.*, 14 F.3d 457, 460 (9th Cir. 1994). The Court  
11 accepts all allegations in the complaint as true, and draws reasonable inferences in  
12 favor of the plaintiff. *Hays v. City of Spokane*, No. CV-11-0010-LRS, 2011 WL  
13 4852311, at \*2 (E.D. Wash. Oct. 13, 2011). Furthermore, the complaint must be  
14 construed in the light most favorable to Plaintiffs. *Parks Schl. of Bus., Inc. v.*  
15 *Symington*, 51 F.3d 1480, 1484 (9th Cir. 1995). However, the Court need not take  
16 legal conclusions as factual allegations. *Iqbal*, 556 U.S. at 678. Overall, the claims  
17 for relief must be plausible on their face. *Id.*

18 The Court may take judicial notice of and consider filed litigation  
19 documents as public records. *Lee v. City of Los Angeles*, 250 F.3d 668, 689 (9th  
20 Cir. 2001). The Court hereby takes notice of the docket in the '193 case, and the  
21 documents contained therein.

### 22 *Analysis*

23 This case is governed by the law of claim preclusion, which prevents the re-  
24 litigation of claims that have already been brought to court. Because this Court sits  
25 in diversity and considers Plaintiffs' state law claims for wrongful foreclosure and  
26 fraud, Washington law on claim preclusion applies. *Semtek Int'l v. Lockheed*  
27 *Martin Corp.*, 531 U.S. 497, 509 (2001).

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1 The doctrine of claim preclusion “treats a judgment, once rendered, as the  
 2 full measure of relief to be accorded between the same parties on the same claim  
 3 or cause of action.” *McClain v. Apodaca*, 793 F.2d 1031, 1033 (9th Cir. 1986).  
 4 Claim preclusion “bars all grounds for recovery which could have been asserted,  
 5 whether they were or not, in a prior suit between the same parties on the same  
 6 cause of action.” *Clark v. Bear Stearns & Co.*, 966 F.2d 1318, 1320 (9th Cir.  
 7 1992).

8 The rule applies when two cases are identical in respect to “(1) subject matter; (2)  
 9 cause of action; (3) persons and parties; and (4) the quality of the persons for or  
 10 against whom the claim is made.” *Sprinkle v. SB&C Ltd.*, 472 F. Supp. 2d 1235,  
 11 1241 (W.D. Wash. 2006) (citing *Rains v. State*, 100 Wn.2d 660, 663 (1983)).

12 Because the rule applies to all grounds for recovery which could have been  
 13 asserted, there is no need for the Court to analyze the substantive merit of  
 14 Plaintiffs’ new claims;<sup>1</sup> the Court need only examine the four factors listed above  
 15 to discern if the previously-adjudicated claims are being brought once more. *Noel*  
 16 *v. Hall*, 341 F.3d 1148, 1171 (9th Cir. 2003).

17 There can be no doubt that claim preclusion applies. The Batsons, plaintiffs  
 18 in the ‘193 case and here, bring claims for an identical factual pattern: the  
 19 allegedly improper and fraudulent foreclosure of the house in Spokane Valley,  
 20 Washington. The subject matter is identical. The ‘193 complaint brought causes of  
 21 action under wrongful foreclosure, fraud, civil rights violations, and a variety of  
 22 federal statutory claims. The instant case brings claims under fraud and wrongful  
 23 foreclosure, so there is an identity between causes of action. Indeed, the causes

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24 <sup>1</sup> The Court notes that one reason it dismissed the wrongful foreclosure claim under RCW 61.24.130(1) in the ‘193  
 25 case, Order Granting in Part and Denying in Part Motions to Dismiss, 2:15-cv-00193-SAB, ECF No. 59 at 4, is that  
 26 the Washington Deed of Trust Act does not allow damages before a foreclosure sale is completed. *Pfau v. Wash.*  
 27 *Mutual, Inc.*, No CV-08-00142-JLQ, 2009 WL 484448, at \*12 (E.D. Wash. Feb. 24, 2009). The previous suit was  
 28 initiated before the foreclosure sale occurred. Plaintiffs could plausibly argue that because the sale has now taken  
 place, they are entitled to damages. However, as the ‘193 order makes clear, Plaintiffs did not allege an actual  
 violation of the Deed of Trust Act in the ‘193 case. Even if the instant complaint alleges new issues, under the rule of  
 claim preclusion, “all grounds for recovery *which could have been asserted*” are moot. *Clark*, 966 F.2d at 1320  
 (emphasis added).

1 arise from the same nucleus of fact, entail the infringement of the same rights, are  
2 based on the same evidence, and would impact determinations and rights  
3 established under the ‘193 case. *Constantini v. Trans World Airlines*, 681 F.2d  
4 199, 1201-02 (9th Cir. 1982).

5 In the ‘193 case, Richard Batson and Beverly Jones-Batson sued Deutsche,  
6 Morgan Stanley, Ocwen, Cascade National Trust, and various anonymous parties,  
7 in their roles as loan originators, trustee, and loan servicer. In this case, Richard  
8 Batson and Beverly Jones-Batson again sue Deutsche, Morgan Stanley, Ocwen,  
9 and Cascade for the same actions and roles in the ‘193 case. The parties are  
10 therefore identical. The fact that the anonymous parties are not included in this  
11 suit does not prevent a finding of identity. *See, e.g., Sunshine Anthracite Coal Co.*  
12 *v. Adkins*, 310 U.S. 381, 402 (1940) (“[P]arties nominally different may be, in  
13 legal effect, the same.”).

14 The Court’s order in the ‘193 action dismissing the claims served as a  
15 judgment on the merits of Plaintiffs’ claims, and so precluded their refiling in any  
16 court, state or federal. This case presents a paradigmatic example of claim  
17 preclusion, and the Court applies it to Plaintiff’s complaint. And because the  
18 standard for claim preclusion applies to *all* facts or claims that *should* have been  
19 considered in the former case, any new information or claims Plaintiffs plead are  
20 precluded. This renders any future amendment of the complaint futile, and thus  
21 this case is dismissed with prejudice. *See Reddy v. Litton Indus., Inc.*, 912 F.2d  
22 291, 296 (9th Cir. 1990).

23 Plaintiffs styled their responses to Defendants’ motions to dismiss as  
24 motions for summary judgment. ECF Nos. 8 & 9. The Court construed them  
25 properly as responses. Plaintiffs are correct that Defendants have not shown a  
26 dispute as to any material fact; indeed, under the standard of a motion to dismiss,  
27 the Court and the Defendants, have assumed all facts pled by Plaintiffs as true.

1 Defendants *have* shown that the facts alleged in the instant complaint are  
2 identical to those in the ‘193 case, and that the causes of action are identical. This  
3 is confirmed by a review of both complaints, and Defendants’ request for judicial  
4 notice of the ‘193 case materials accomplishes the same. Plaintiffs never provide  
5 any information on how the claims or facts are different in any way, instead baldly  
6 asserting that there are “differences in governing law, Defendant [sic] named, and  
7 legal theories.” ECF No. 8 at 4:20-5:1. Plaintiffs allege no different governing  
8 law; the Defendants *are* identical; and styling a “fraud” claim as “intent to  
9 defraud” does not create a new cause of action. It strains credulity that the  
10 Plaintiffs argue in good faith that this case differs in any way from the ‘193 case.

11 ***Conclusion***

12 The Court hereby **dismisses** this case **with prejudice**. The ‘193 case is the  
13 only vehicle where Plaintiffs can vindicate any legal rights resulting from the  
14 foreclosure of their house.

15 Given the emotional nature of the claims involved in this case, as well as  
16 Plaintiffs’ pro se status, the Court declines to sanction Plaintiffs at this time. The  
17 Court notes that any future complaints relating to these claims could be met with  
18 sanctions and attorneys’ fees for Defendants.

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Accordingly, **IT IS HEREBY ORDERED:**

1. Defendants Deutsche and Ocwen’s Motion to Dismiss, ECF No. 5, is **GRANTED**.

2. Defendant Morgan Stanley’s Motion to Dismiss, ECF No. 6, is **GRANTED**.

3. Plaintiff’s Motion to Stay Pending Disposition of a Motion to Grant Amendment, ECF No. 10, is **DENIED**.

4. All claims are **dismissed with prejudice**. Because Plaintiffs can plead no set of facts that would entitle them to relief, leave to amend would be futile, and is denied.

5. The hearing scheduled for April 21, 2016, in Spokane, Washington, is **VACATED**.

**IT IS SO ORDERED.** The District Court Executive is hereby directed to file this Order, provide copies to counsel and pro se Plaintiffs, and **close the file**.

**DATED** this 22nd day of March, 2016.



A handwritten signature in blue ink that reads "Stanley A. Bastian". The signature is written in a cursive, flowing style.

Stanley A. Bastian  
United States District Judge